

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (For Court Use Only)
PLAINTIFFS LINDA LOU VANBECELAERE 141 CARNAVON PKWY Nashville, TN 37205		DEFENDANTS CAPWEALTH ADVISERS, LLC, PMW PARTNERS, TIMOTHY J PAGLIARA, MARK WILLOUGHBY, AND TIMOTHY MURPHY
ATTORNEYS (Firm Name, Address, and Telephone No.) Steven L. Lefkovitz 5953 LEFKOVITZ & LEFKOVITZ 618 CHURCH ST., #410 NASHVILLE, TN 37219-2321 615-256-8300 Fax: 615-255-4516		ATTORNEYS (If Known) Eugene N. Bulso, Jr. Leader, Bulso, Nolan & Burnstein 414 Union Street, Suite 1740 Nashville, TN 37219 (615) 780-4110
PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee		PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input checked="" type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUES INVOLVED) Complaint for Discriminatory Treatment for Filing Bankruptcy		
NATURE OF SUIT		
(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
FRBP 7001(1) - Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input checked="" type="checkbox"/> 14-Recovery of money/property - other		
FRBP 7001(2) - Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property		
FRBP 7001(3) - Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)		
FRBP 7001(4) - Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)		
FRBP 7001(5) - Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation		
FRBP 7001(6) - Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny		
(continued next column)		
<input type="checkbox"/> Check if this case involves a substantive issue of state law		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23
<input type="checkbox"/> Check if a jury trial is demanded in complaint		Demand \$ 500,000.00
Other Relief Sought		

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR KARL LEE VANBECELAERE LINDA LOU VANBECELAERE		BANKRUPTCY CASE NO. 3:09-bk-04691
DISTRICT IN WHICH CASE IS PENDING Middle District of Tennessee	DIVISION OFFICE Nashville	NAME OF JUDGE Paine
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING		DIVISION OFFICE
NAME OF JUDGE		
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
<i>Is/ Steven L. Lefkovitz</i> <u>Steven L. Lefkovitz 5953</u>		
DATE September 23, 2009	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Steven L. Lefkovitz 5953	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE

IN RE:)
)
KARL LEE VANBECELAERE) No. 309-04691
LINDA LOU VANBECELAERE) Chapter 11
141 CARNAVON PARKWAY) Judge Paine
NASHVILLE, TN 37205)
SSN: xxx-xx-0065(H) xxx-xx-8091 (W))
)
Debtor)
)
LINDA LOU VANBECELAERE)
)
Plaintiff)
)
-vs-) Adv. Pro. No.
)
CAPWEALTH ADVISERS, LLC, PMW)
PARTNERS, TIMOTHY J PAGLIARA, MARK)
WILLOUGHBY, AND TIMOTHY MURPHY)
)
Defendants)

COMPLAINT FOR DISCRIMINATORY TREATMENT FOR FILING BANKRUPTCY

Comes the Plaintiff, LINDA LOU VANBECELAERE, through counsel, and for complaint in this cause, would show the following unto the Court:

1. The Plaintiff is the Debtor in the above-captioned bankruptcy, having filed a petition for relief under Chapter 11 of the Bankruptcy Code on April 25, 2009. All references to the Debtor in this complaint also reference the Plaintiff.

2. The Defendant, CAPWEALTH ADVISERS, LLC, is a Tennessee limited liability company. The Defendant PMW Partners is a general partnership operating under the laws of the state of Tennessee and upon information and belief consists of the following members – Timothy J.

Pagliara, Mark Willoughby, and Timothy Murphy. All of the Defendants can be served at 810 Crescent Center Drive, Suite 501, Franklin, Tennessee 37067.

3. Jurisdiction for this Court to hear this cause of action properly lies with Court pursuant 28 U.S.C. 1334, and venue for this Court to hear this cause of action is appropriate pursuant to 28 U.S.C. 1408. This action is a core proceedings as defined by 28 U.S.C. 157(b). This is an adversary proceeding pursuant to Fed.R.Bankr.P. 7001.

FACTUAL BACKGROUND

4. On or about June 4, 2009 the Plaintiff was terminated from her Position with PMW Partners and/or Capwealth Advisers, LLC. Defendant Timothy J. Pagliara testified that the Plaintiff was employed by PMW Partners but received her paycheck from Capwealth Advisers, LLC. Upon information and belief, Timothy J. Pagliara, Mark Willoughby, and Timothy Murphy are the general partners of PMW Partners and as such are liable for the acts of the partnership.

5. Attached hereto is a copy of the sworn affidavit of James T. Ragsdale a/k/a Tom Ragsdale who states that the Plaintiff was terminated solely as a result of seeking bankruptcy relief. At the Rule 2004 examination taken in this case, Defendant Pagliara testified that the Plaintiff's job was eliminated. However, when Mr. Ragsdale had the conversation with Defendant Pagliara over the termination of the Plaintiff, it was in advance of the employment dismissal. Further, the Plaintiff had maintained an acceptable work record during her employment with the Defendant.

6. Section 525(b) of the Bankruptcy Code prohibits discriminatory treatment, as follows:

(b) No private employer may terminate the employment of, or discriminate with respect to employment against, an individual who is or has been a debtor under this title, a debtor or bankrupt under the Bankruptcy Act, or an individual associated with such debtor or bankrupt, solely because such debtor or bankrupt--

- (1)** is or has been a debtor under this title or a debtor or bankrupt under the Bankruptcy Act;
- (2)** has been insolvent before the commencement of a case under this title or during the case but before the grant or denial of a discharge; or
- (3)** has not paid a debt that is dischargeable in a case under this title or that was discharged under the Bankruptcy Act.

WHEREFORE, based on the following discriminatory treatment, the Plaintiff seeks \$250,000 in compensatory damages and \$250,000.00 in punitive damages.

Respectfully submitted,

/s/ Steven L. Lefkovitz. No. 5953

Steven L. Lefkovitz
Attorney for Plaintiffs
618 Church Street, Suite 410
Nashville, TN 37219
(615) 256-8300 fax (615) 255-4516
Email: slefkovitz@lefkovitz.com

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

IN RE:)
)
KARL LEE VAN BECELARE)
LINDA LOU VAN BECELARE) No. 309-04691
141 CARNAVON PKWY) Chapter 11
Nashville, TN 37205) Judge Paine
SSN: xxx-xx-0065(H) xxx-xx-8091(W))
)
Debtor) *Tom Ragsdale*

AFFIDAVIT OF TOM RAGSDALE

Tom Ragsdale
Comes Tom Ragsdale, after first being duly sworn according to law, and makes oath
and says:

1. I am a citizen and resident of Nashville, Davidson County, Tennessee.
2. I am personally acquainted with Thomas J. Pagliara and have read the Rule 2004 examination taken of him on August 20, 2009, a copy of which is attached hereto.
3. Prior to the termination of Linda Lou Van Becelaere from PMW Partners and/or Capital Wealth Advisors, I had a conversation with Mr. Pagliara in which he advised me that Linda Lou Van Becelaere ~~had~~ as a result of her filing a Chapter 11 proceeding.

Affiant further saith not.

Tom Ragsdale
Tom Ragsdale

VERIFICATION

I hereby certify under the penalties of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Tom Ragsdale
Tom Ragsdale

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

KARL LEE VAN BECELAERE and)
LINDA LOU VAN BECELAERE,) NO. 309-04691
141 Carnavon Parkway) Chapter 11
Nashville, TN 37205) Judge Paine
SSN/ITIN: xxx-xx-0065 (H))
xxx-xx-8091 (W))
)

RULE 2004 EXAMINATION OF
TIMOTHY J. PAGLIARA
Taken on Behalf of the Debtors
August 20, 2009

APPEARANCES:

For the Debtors:

STEVEN L. LEFKOVITZ
Lefkovitz & Lefkovitz
618 Church Street
Suite 410
Nashville, Tennessee 37219
(615) 256-8300
slefkovitz@lefkovitz.com

For the Witness:

EUGENE N. BULSO, JR.
Leader, Bulso, Nolan & Burnstein
414 Union Street
Suite 1740
Nashville, Tennessee 37219
(615) 780-4110
gbulso@LeaderBulso.com

Also Present: Linda Lou Van Becelaere

Brentwood Court Reporting Services, LLC
(615) 791-6983 *** (866) 939-3376

1	INDEX		
2	INDEX OF EXAMINATIONS		
3	Page/Line		
4	By Mr. Lefkovitz	4	2
5			
6	INDEX OF EXHIBITS		
7	NO EXHIBITS		
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

Brentwood Court Reporting Services, LLC
(615) 791-6983 *** (866) 939-3376

1 The deposition of TIMOTHY J. PAGLIARA,
2 taken on behalf of the Debtors, on the 20th day of
3 August, 2009, in the offices of Leader, Bulso, Nolan
4 & Burnstein, 414 Union Street, Suite 1740,
5 Nashville, Tennessee, for all purposes under the
6 Bankruptcy Rules of Civil Procedure.

11 It is agreed that Jerri L. Porter,
12 being a Notary Public and Court Reporter for the
13 State of Tennessee, may swear the witness, and that
14 the reading and signing of the completed deposition
15 by the witness is waived.

16

17

18

19

* * *

21

22

23

24

25

TIMOTHY J. PAGLIARA,

23 was called as a witness, and after having been first
24 duly sworn, testified as follows:

Brentwood Court Reporting Services, LLC
(615) 791-6983 *** (866)939-3376

1 EXAMINATION

2 BY MR. LEFKOVITZ:

3 Q Mr. Pagliara, I understand you're an
4 attorney licensed to practice law, and you've been
5 through these many times. This is an Examination
6 Rule 2004, Federal Rules of Bankruptcy Procedure.

7 A Yes.

8 Q I'm going to make this maybe one of the
9 easier depositions that I've ever had. Will you
10 please relate the facts and circumstances relating
11 to the termination of Ms. Van Becelaere from the
12 company that you're the managing partner of?

13 A I'm not -- I don't understand the question.

14 Q Why was she fired?

15 A We eliminated the position.

16 Q Why was the position eliminated?

17 A Cost saving measures.

18 Q Cost saving measures. When was the decision
19 made to terminate Ms. Van Becelaere?

20 A I don't recall. Shortly before she was
21 terminated.

22 Q Were you aware that she was in a bankruptcy
23 proceeding?

24 A Yes,

25 Q Did her bankruptcy proceedings directly or

1 indirectly factor in to your decision to terminate
2 her?

3 A No.

4 Q Did you make a statement to a third party or
5 any third parties that her bankruptcy was involved
6 in your reasonings for termination?

7 A I don't recall.

8 Q Are you acquainted with an individual named
9 Tom Ragsdale?

10 A Yes.

11 Q How do you know Mr. Ragsdale?

12 A We climbed Kilimanjaro together. We climbed
13 to base camp at Mount Everest. We're good friends.

14 Q Did you have a conversation with
15 Mr. Ragsdale regarding the dismissal or termination
16 of Ms. Van Becelaere?

17 A I probably talked to him sometime after she
18 was terminated, yes.

19 Q Do you recall telling Mr. Ragsdale that she
20 was terminated solely as a result of her filing
bankruptcy?

22 A Absolutely not.

23 Q If he made such a statement, he would be in
error; is that correct?

25 A Yes, correct.

1 Q How was Ms. Van Becelaere's work performance
2 while she worked for your company?

3 A Be more specific.

4 Q Was she a good employee?

5 A She hadn't been with us long enough to
6 really tell. She had been with us not quite
7 seven months.

8 Q All right. In the seven months, did she
9 work normal hours? What were her duties?

10 A She was a sales assistant, I guess. Not a
11 sales assistant. Customer service representative.
12 She did various things for the firm: Helped with
13 the blotter, daily cash reconciliation when we take
14 in deposits, things like that.

15 Q Did she report to you?

16 A They all report to me, yes.

17 Q Were you her direct supervisor?

18 A For purposes of employment, yes. She worked
19 with another partner in the firm, Mark Willoughby.
20 But I assumed the role of managing partner and am
21 directly responsible for hiring and firing anybody
22 in the firm.

23 Q There are multiple companies, limited
24 liability companies in your offices, aren't there?
25 Is there more than one?

Brentwood Court Reporting Services, LLC
(615) 791-6983 *** (866) 939-3376

1 A There are two shell companies right now that
2 we are applying for regulatory approval. We
3 anticipate moving our operation to those companies
4 at the end of the year.

5 Q What companies are those?

6 A Cap Wealth Advisors and Cap Wealth
7 Investment Services. Cap Wealth Advisors is an SEC
8 registered broker/dealer. Cap Wealth Advisors
9 Investment Services is a FINRA -- pending FINRA
10 registration as an introducing broker/dealer.

11 Q Which company was Ms. Van Becelaere employed
12 by?

13 A She was employed by PMW Partners, which is
14 the entity we assigned income through -- from PMW
15 Partners, through, I believe, Cap Wealth Advisors,
16 where she received her paycheck. But that's not an
17 active entity in terms of income at this point.

18 Q What is the name of the holding company for
19 all of the companies?

20 A There's not one.

21 Q Okay. As an attorney with experience in
22 these matters, on any SEC regulatory filings, would
23 you have had to disclose Ms. Van Becelaere's
24 bankruptcy?

25 A Well, when you say as an attorney with

1 regulatory experience --

2 Q Well, you've had experience, so I'm going to
3 ask you --

4 A I'm not an attorney with regulatory
5 experience. I'm an attorney.

6 Q Based on your experience, would you have had
7 to make disclosure of Ms. Van Becelaere's bankruptcy
8 on any regulatory filings?

9 A I'm not sure.

10 Q Did you make such a disclosure?

11 A No.

12 Q Did you inquire of your attorney or any
13 parties whether or not you would have had to make
14 disclosure of her bankruptcy in any regulatory
15 filings?

16 MR. BULSO: Hold on a minute. I
17 believe that "we," as it is framed, is invasive of
18 the attorney/client privilege. So if you could
19 perhaps rephrase it.

20 MR. LEFKOVITZ: I'll withdraw it. I'll
21 rephrase that.

22 BY MR. LEFKOVITZ:

23 Q Did you inquire of any legal opinion,
24 without telling me what the lawyers told you, the
25 effect of Ms. Van Becelaere's bankruptcy on any

1 regulatory actions?

2 A No.

3 Q Were you in any way concerned by her
4 bankruptcy in any regulatory actions?

5 A I was concerned she was getting ready to
6 apply to take the Series 7 exam, and that's a
7 disclosable event on your application to be licensed
8 with FINRA.

9 Q That's correct.

10 A But that's a personal matter. That's not a
11 matter that falls to the firm itself.

12 Q Had you given any job performance
13 evaluations of Ms. Van Becelaere while she was in
14 your employ?

15 A Not officially. We had to discuss -- I had
16 to intervene with one of the office managers about
17 her being late a number of times, and it was kind of
18 a disagreement between the two of them about when
19 she would get there and when she wouldn't. This
20 lady is real concerned about punctuality, and Linda
21 had a habit of being late.

22 Q How often was she late?

23 A Frequently.

24 Q Did you ever write her up or --

25 A We don't have that kind of formality in the

1 office, so I don't have that -- you know, that type
2 of thing. I mean, it's a small office. They're
3 either doing the job or they're not. So if you come
4 in late, you're going to be noticed for coming in
5 late.

6 Q Was Ms. Van Becelaere doing the job?

7 A That's kind of a broad question.

8 Q Was her work performance satisfactory?

9 A I didn't really evaluate it on that basis,
10 so I haven't really thought about that from that
11 standpoint. We eliminated the position in a cost
12 saving measure, so I didn't really evaluate whether
13 her work performance was adequate or not.

14 Q Were there any other positions eliminated as
15 part of the cost-saving measures?

16 A No.

17 Q Was there any other position with junior
18 seniority that was retained from Ms. Van Becelaere?

19 A No. Ms. Van Becelaere was the last person
20 we hired.

21 Q Who was the ultimate decision-maker for the
22 hiring or firing of Ms. Van Becelaere?

23 A I was.

24 MR. LEFKOVITZ: I don't have anything
25 further.

1 MR. BULSO: We have no questions.

2 FURTHER DEPONENT SAITH NOT.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Brentwood Court Reporting Services, LLC
(615) 791-6983 *** (866) 939-3376

REPORTER'S CERTIFICATE

3 I, Jerri L. Porter, RPR, CCR, Notary
4 Public and Court Reporter, do hereby certify that I
5 recorded to the best of my skill and ability by
6 machine shorthand all the proceedings in the
7 foregoing transcript, and that said transcript is a
8 true, accurate, and complete transcript to the best
9 of my ability.

10 I further certify that I am not an
11 attorney or counsel of any of the parties, nor a
12 relative or employee of any attorney or counsel
13 connected with the action, nor financially
14 interested in the action.

SIGNED this 31st day of August, 2009.

16

17

18

19

20

21

Jerri L. Porter, RPR, CCR

22

23

34

Brentwood Court Reporting Services, LLC
(615) 791-6983 *** (866)939-3376